

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

TONY B. GACKINS;
PLAINTIFF,

CIVIL ACTION

vs

05-10858 GAO

UMASS CORRECTIONAL HEALTH SERVICES;

SEAN J. MARTIN, HEALTH SERVICE DIRECTOR;

Referred to CH MJ MB Baila

DAVID NOLAN, SUPERINTENDENT; LISA MITCHELL,

VERIFIED CIVIL

DEPUTY SUPERINTENDENT, et al,

COMPLAINT AND

DEFENDANTS.

JURY DEMAND

I. INTRODUCTION

THIS IS A CIVIL COMPLAINT BROUGHT BY PLAINTIFF, TONY B. GACKINS, AGAINST THE DEFENDANTS FOR BEING DELIBERATELY INDIFFERENT AND NEGLIGENT TOWARDS HIS SURGICALLY REPAIRED RIGHT SHOULDER, IN WHICH, BY NOT RECEIVING THE PROPER AFTER CARE, CAUSED PLAINTIFF PERMANENT DAMAGE TO HIS SHOULDER DUMBING IT FROM "FULL" MOBILITY IN VIOLATION OF THE FEDERAL CONSTITUTION.

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II. JURISDICTION

JURISDICTION IS INVOKED UPON THIS COURT
FORWARD TO 42 U.S.C. § 1983.

III. PARTIES

1. TONY B. GASKINS, THE PLAINTIFF, IS AND WAS AT ALL TIMES RELEVANT TO THIS COMPLAINT.
2. UMMS CORRECTIONAL HEALTH SERVICES, WHOSE ADDRESS IS: ONE RESEARCH DRIVE-SUITE 120C, IS AND WAS AT ALL TIMES RELEVANT TO THIS COMPLAINT, AND ARE BEING SUED IN THEIR INDIVIDUAL AND OFFICIAL CAPACITY.
3. SUSAN J. MARTIN, THE DEFENDANT, WHO IS THE DIRECTOR OF THE HEALTH SERVICE DIVISION OF THE DEPARTMENT OF CORRECTION WHOSE ADDRESS IS: 12 ADMINISTRATION RD., P.O. BOX 426, BRIDGEWATER, MA. 02324, IS AND WAS AT ALL TIMES RELEVANT TO THIS COMPLAINT, AND IS BEING SUED IN BOTH HER INDIVIDUAL AND OFFICIAL CAPACITY.
4. DAVID NOLAN, THE DEFENDANT, IS THE SUPERINTENDENT OF MCI-CEDAR JUNCTION, IS AND WAS AT ALL TIMES RELEVANT TO THIS COMPLAINT, AND IS BEING SUED IN BOTH HIS OFFICIAL AND INDIVIDUAL CAPACITY.
5. LISA MITCHELL, THE DEFENDANT, IS THE DEPUTY SUPER-

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INTENDENT OF MCI-CEDAR JUNCTION, IS AND WAS AT ALL TIMES RELEVANT TO THIS COMPLAINT, AND IS BEING SUED IN BOTH HER OFFICIAL AND INDIVIDUAL CAPACITY.

IV. STATEMENT OF FACTS

6. ON DECEMBER 8, 2004, THE PLAINTIFF HAD ORTHOSCOPIC SURGERY ON HIS RIGHT SHOULDER IN HIS ROTATOR CUP AND A PIECE OF HIS CLAVICAL HAD TO BE REMOVED. SHATTUCK HOSPITAL PERFORMED THE SURGERY.

7. DURING THE PERIOD OF THE SURGERY, THE PLAINTIFF WAS HELD IN 10 BLOCK SEGREGATION UNIT IN CELL #47.

8. ABOUT TWO WEEKS AFTER THE SURGERY, THE PLAINTIFF'S STAPLES WERE REMOVED FROM HIS SHOULDER. HE HAD NO MOBILITY AND HAD A "NO CUFF" ORDER FOR HIS RIGHT ARM.

9. SHORTLY AFTER THE STAPLES REMOVAL, THE PLAINTIFF RETURNED TO THE LEVINEL SHATTUCK HOSPITAL AS A "FOLLOW UP" TO HIS SURGERY AND WAS GIVEN A "THERO BAND" AND SOME INSTRUCTIONS TO PERFORM SELF-PHYSICAL THERAPY ON HIS SHOULDER.

10. THE DOCTOR ALSO WROTE UP AN ORDER FOR THE PLAINTIFF

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TO RECEIVE PHYSICAL THERAPY THROUGH THE PRISON'S HEALTH SERVICES UNIT FOR THE LIFTING OF WEIGHTS AND ETC. TO DEVELOP MUSCLE MASS LOST DURING AND AFTER THE SURGERY.

11. UPON RETURNING TO THE PRISON WITH THE THERO-BAND TO USE FOR EXERCISE, THE PRISON ADMINISTRATION CONFISCATED THE THERO-BAND FROM THE PLAINTIFF AND WOULD NOT ALLOW HIM TO USE IT.

12. THE PLAINTIFF COMPLAINED TO THE NURSE MAKING ROUNDS IN 10 BLOCK THAT HIS THERO-BAND WAS CONFISCATED BY THE PRISON AND HE NEEDS SOME TYPE OF PHYSICAL THERAPY TO GET BETTER. SHE SAID SHE WOULD LOOK INTO IT AND NEVER GOT BACK TO HIM.

13. THE PLAINTIFF THEN COMPLAINED TO DEFENDANTS NOLAN AND MITCHELL THAT HE MUST RECEIVE THE PHYSICAL THERAPY AS ORDERED BY THE PHYSICIAN TO REGAIN STRENGTH AND MOBILITY IN HIS SHOULDER OR HIS SHOULDER WOULD HAVE TO BE "RE-OPERATED" ON AGAIN. NOLAN AND MITCHELL IGNORED HIS PLEAS.

14. PLAINTIFF'S SISTER, SINDEY A. HAYES, CALLED THE PRISON AND SPOKE TO DEFENDANT MITCHELL, WHO, IN TURN, TOLD MRS. HAYES, "I WILL LOOK INTO IT."

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15. MONTHS PASSES BY AND PLAINTIFF RETURNED TO SHATTUCK HOSPITAL ON MARCH 10, 2005 AS ANOTHER "FOLLOW UP." THE DOCTOR, MARY CONNOLLY, QUESTIONED IF PLAINTIFF RECEIVED "ANY" PHYSICAL THERAPY SINCE THEIR LAST MEETING. PLAINTIFF SAID NO.

16. MARY CONNOLLY WAS FRUSTRATED AND SAID THAT IF PLAINTIFF DID NOT RECEIVE PHYSICAL THERAPY SOON, IT COULD CAUSE SCAR TISSUE AND PERMANENT DAMAGE.

17. MRS. CONNOLLY NOTICED THAT HIS SHOULDER WAS VERY "WEAK" AND THAT HE LOST A LOT OF "MUSCLE MASS." SHE SAID THEY MAY HAVE TO RE-OPERATE ON HIS SHOULDER TO REMOVE THE SCAR TISSUE AND TO "MOVE" THE SHOULDER JOINT.

18. BECAUSE OF THIS MEDICAL NEGLECT BY DEFENDANTS, THE PLAINTIFF WAS INFERRED GREATLY. HE IS IN CONSTANT PAIN AND IS ABLE LIFT HIS ARM ABOVE HIS HEAD WITHOUT USING HIS LEFT HAND TO ADJUST HIS RIGHT ARM.

19. PLAINTIFF NO LONGER HAS "FULL" MOBILITY IN HIS RIGHT SHOULDER ARM AREA AND HAS LOST A LARGE AMOUNT OF MUSCLE MASS.

20. THE DEFENDANTS ACTIONS WERE WANTON, WILFUL, DELIBERATELY

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INDIFFERENT, AND HAVE INFLICTED MENTAL AND EMOTIONAL DISTRESS UPON THE PLAINTIFF BECAUSE HE IS NOW PHYSICALLY DISABLED BECAUSE OF THE MEDICAL NEGLECT BY DEFENDANTS.

21. PLAINTIFF WAS VERY ATHLETIC AND HEALTH CONSCIOUS, BUT NOW HE IS UNABLE TO PROPERLY EXERCISE BECAUSE OF HIS NEW DISABILITY.

22. BECAUSE OF THIS DISABILITY, PLAINTIFF CANNOT BE CUFFED BEHIND HIS BACK AND MUST EITHER BE CUFFED IN THE FRONT OR IN "WATCHCHAINS." THE PAIN IS TOO UNBEARABLE TO BE HANDCUFFED BEHIND THE BACK.

23. PLAINTIFF'S RIGHT SHOULDER JUMPS IN AND OUT ITS SOCKET ON REGULAR OCCASIONS CAUSING HIM GREAT PAIN.

24. PLAINTIFF CAN NOT SLEEP GOOD AT NIGHT BECAUSE IF HE LAYS ON THE SHOULDER, IT CAUSES A GREAT PAIN THAT SHOOTS THROUGH HIS BODY LIKE ELECTRICITY CAUSING DISCOMFORT AND FOR HIM TO TRY TO SLEEP IN ONE POSITION TO GET SOME SLEEP.

25. THEN ON OR ABOUT APRIL 6, 2005, PLAINTIFF WAS TAKEN TO MCI-SHIRLEY MEDIUM TO ATTEND A SESSION OF PHYSICAL THERAPY, ALMOST FOUR AND ONE-HALF MONTHS LATER.

26. PLAINTIFF HAS SUFFERED PHYSICALLY AND EMOTIONALLY, AND CONTINUES TO SUFFER TO THIS DAY AND WILL FOREVER CONTINUE

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TO SUFFER BECAUSE OF THIS MEDICAL NEGLIGENCE.

27. THE PHYSICAL THERAPY PLAINEIFF IS BEGINNING TO RECEIVE IS FOUR MONTHS TOO LATE.

V. CAUSE OF ACTION

PLAINTIFF REALLEGES AND REAFFIRMS PARAGRAPHS 1-27.

COUNT I.

28. CUMMIS CORRECTIONAL HEALTH, A PRIVATE CONTRACTOR TO ADMINISTER THE HEALTH CARE OF PRISONERS, ACTIONS WERE DELAYING ALMOST FOUR AND ONE-HALF MONTHS TO GIVE THE PLAINTIFF PHYSICAL THERAPY ON HIS SURGICALLY REPAIRED SHOULDER WAS "DELIBERATE INDIFFERENCE TO THE SERIOUS MEDICAL NEEDS OF THE PLAINTIFF" RESULTING IN A "GENUINE PRIVATION", THEREBY AMOUNTING TO CRUEL AND UNUSUAL PUNISHMENT IN VIOLATION OF THE EIGHTH AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION, AND 42 U.S.C. § 1983.

COUNT II.

29. LISA MITCHELL AND DAVID NOLAN, AS THE DEPUTY SUPERINTENDENT AND SUPERINTENDENT OF MCI-CEGAR JUNCTION, THEY WERE OBLIGATED TO ASSURE THAT PLAINTIFF'S MEDICAL NEEDS WAS ATTAINED BUT DISREGARDED HIS PLEAS AND NOW PLAINTIFF IS PERMANENTLY DISABLED, WHERE THEY HAD THE POWER TO HAVE HAD

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PLAINTIFF TRANSPORTED TO MCI-SHIRLEY MEDICUM TO RECEIVE PHYSICAL THERAPY IMMEDIATELY AFTER THE STAPLES WERE REMOVED FROM HIS SHOULDER. THEY WERE "DELIBERATELY INDIFFERENT TO THE SERIOUS MEDICAL NEEDS OF THE PLAINTIFF" RESULTING IN A "GENUINE PRIVATION" IN VIOLATION OF THE EIGHTH AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION AND 42 U.S.C. § 1983.

COUNT III

30. SUSAN J. MARTIN'S POSITION IS THAT SHE IS RESPONSIBLE FOR THE DELIVERY OF QUALITY MEDICAL SERVICES TO THE ENTIRE MASSACHUSETTS DEPARTMENT OF CORRECTION INMATE POPULATION. IN THIS CASE, SHE FAILED MISERABLY. UNDER HER TUTELAGE AND SUPERVISION, THE SERIOUS MEDICAL NEEDS OF THE PLAINTIFF WAS IGNORED. RESULTING IN A "GENUINE PRIVATION" IN VIOLATION OF THE EIGHTH AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION AND 42 U.S.C. § 1983.

31. PLAINTIFF REPLECES AND REAFFIRMS PARAGRAPH 1-35.

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VII. PRAYER FOR RELIEF

WHEREFORE, PLAINTIFF PRAYS FOR THE FOLLOWING RELIEF:

A. AWARD THE PLAINTIFF \$250,000.00, JOINTLY AND SEVERALLY, AGAINST EACH DEFENDANT IN PUNITIVE DAMAGES FOR THE DELIBERATE INDIFFERENCE TO THE SERIOUS MEDICAL NEEDS OF THE PLAINTIFF;

B. AWARD THE PLAINTIFF \$100,000.00, JOINTLY AND SEVERALLY, AGAINST EACH DEFENDANT IN COMPENSATORY DAMAGES FOR THE INFLECTION OF MENTAL AND EMOTIONAL DISTRESS ON PLAINTIFF FOR HIS SUFFERING;

C. AWARD PLAINTIFF ATTORNEY FEES AND COURT COSTS;

D. PLAINTIFF DEMANDS A TRIAL BY JURY;

E. AWARD PLAINTIFF ANY OTHER RELIEF THIS COURT DEEMS JUST AND EQUITABLE.

RESPECTFULLY SUBMITTED,



TONY B. GASKINS, PRO SE

MCI- CEDAR JUNCTION

P.O. BOX 100

S. WALPOLE, N.H. 02971

VIII. VERIFICATION

I, TONY GASKINS, VERIFY THAT

THE FACTS STATED HEREIN ARE TRUE

AND ACCURATE.



TONY B. GASKINS

APPENDIX B. CIVIL COVER SHEET

JS 44
(Rev. 07/89)

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of indexing the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I (a) PLAINTIFFS

TONY B. GASKINS, PROSE

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF NORFOLK
(EXCEPT IN U.S. PLAINTIFF CASES)

DEFENDANTS

JAMES CORRECTIONAL HEALTH;
JULIAN J. MARTIN, DIRECTOR HEALTH SERVICE;
DAVID NOLAN, SUPERINTENDENT OF MCI-
CEDAR JUNCTION; LISA MITCHELL, DEPUTY
SUPERINTENDENT OF MCI-CEAR JUNCTIONCOUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT ?

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE
TRACT OF LAND INVOLVED

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)

PROSE MCI-CEAR JUNCTION
P.O. BOX 100, J. WALPOLE,
MA 02771

ATTORNEYS (IF KNOWN)

NANCY A WHITE, ESQ. (DEPT. OF
CORRECTION)

II. BASIS OF JURISDICTION

(PLACE AN X IN ONE BOX ONLY)

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES

(For Diversity Cases Only)

(PLACE AN X IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business in This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. ORIGIN

(PLACE AN X IN ONE BOX ONLY)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from another district (specify)
- ☐ 6 Multidistrict Litigation
- ☐ 7 Appeal to District Judge from Magistrate Judgment

V. NATURE OF SUIT (PLACE AN X IN ONE BOX ONLY)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Motor Act <input type="checkbox"/> 140 Negotiable Instruments <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Uel & Battery <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	<input checked="" type="checkbox"/> 362 Personal Injury—Bad Malpractice <input type="checkbox"/> 365 Personal Injury—Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Torts in Land <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Patent Statute of Property 21 USC 861 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 750 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 422 Appeal <input type="checkbox"/> 423 Withdrawal <input type="checkbox"/> 424 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 620 Copyrights <input type="checkbox"/> 630 Patent <input type="checkbox"/> 640 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1980) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 OWB/CWV (400(g)) <input type="checkbox"/> 864 SSI Title XVI <input type="checkbox"/> 865 RSI (400(g)) FEDERAL TAX SUITS <input type="checkbox"/> 670 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 671 IRS—Third Party 28 USC 7608	<input type="checkbox"/> 400 State <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 420 Bank and Banking <input type="checkbox"/> 430 Commerce/ICC Passes/Reg. <input type="checkbox"/> 440 Deportation <input type="checkbox"/> 470 Receiver Influenced and Corrupt Organizations <input type="checkbox"/> 510 Selective Service <input type="checkbox"/> 530 Securities/Commodities/Exchange <input type="checkbox"/> 575 Customer Challenge 12 USC 3410 <input type="checkbox"/> 581 Agricultural Acts <input type="checkbox"/> 582 Economic Stabilization Act <input type="checkbox"/> 583 Environmental Matters <input type="checkbox"/> 584 Energy Association Act <input type="checkbox"/> 585 Prevention of Information Act <input type="checkbox"/> 590 Aspect of Post-Order/Retraction Under Equal Access to Justice <input type="checkbox"/> 595 Constitutionality of State Statutes <input type="checkbox"/> 596 Other Statutory Actions
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 520 Habeas Corpus <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Other			

VI. CAUSE OF ACTION

(CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE PLAIN AND WRITE A BRIEF STATEMENT OF CAUSE. 42 USC 1983. The defendants did not provide plaintiff with the physical therapy needed after his shoulder surgery causing plaintiff loss of muscle mass and permanent damage to his shoulder.)

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 ☐

DEMAND \$

Check YES only if demanded in complaint:

JURY DEMAND: ☒ YES ☐ NO

VIII. RELATED CASE(S) IF ANY

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

UNITED STATES DISTRICT COURT

(OVER)

RECEIPT # _____ AMOUNT _____ APPLYING FR _____ JUDGE _____ MAG. JUDGE _____